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Alliance Steel Products, Inc. and United Steel Workers of America. Case 6–CA–32650

September 30, 2003

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND WALSH

On November 14, 2002, Administrative Law Judge Arthur J. Amchan issued the attached decision. The General Counsel filed exceptions and a supporting brief.¹

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.²

The General Counsel has excepted to the judge's finding that "there is no evidence that Respondent was aware of any union activity among its workforce until July 23, [2003]" and, thus, his dismissal of the complaint allegation that Respondent violated Section 8(a)(1) of the Act by threatening employees with discharge "on or about July 2, 2001." The General Counsel contends that this finding fails to take into account evidence regarding a meeting in late June or early July 2001 between Plant Manager Bob Balint and employee Scott Stiffler. We find merit in this exception.

Stiffler's uncontested testimony shows that in late June or early July 2001, Plant Manager Bob Balint called Stiffler into his office.³ Balint began the meeting by addressing a problem Stiffler was experiencing with tow

motor drivers. Then Balint told Stiffler that he had "been hearing rumors about [Stiffler] talking about getting the union in the shop." Stiffler admitted that he had been discussing the Union and stated the employees "need[ed] a union in the shop." Balint responded: "The union's not coming in here. If I ever hear of you speaking of union shit in my shop again, I'll fire you on the spot." Balint ended the conversation by asking Stiffler if they had reached an understanding.

Although the Respondent clearly had knowledge of Stiffler's union activities when Balint uttered his threat on July 2, it is well established that evidence of employer knowledge is not a necessary element of an 8(a)(1) violation. Rather, the test is whether the Respondent's conduct would reasonably tend to interfere with, threaten, or coerce employees in the exercise of their Section 7 rights.⁴ We find that Balint's threat to fire Stiffler "on the spot" if he continued to talk about the union reasonably had that effect.

Accordingly, we find that the Respondent has violated Section 8(a)(1), as alleged.

ORDER

The National Labor Relations Board orders that Respondent, Alliance Steel Products, Inc., Alliance, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging, warning, or otherwise discriminating against any employee for supporting the United Steel Workers of America or any other union.

(b) Threatening employees with loss of their jobs to discourage union activity.

(c) Removing or prohibiting the posting of materials relating to union organizing or other protected activities on bulletin boards on which other nonwork-related materials are allowed to be posted.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Donald Braham, Gary Combs, Nelson Lanham, Scott Stiffler, Marcus Grinter, and Debra Watson full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

¹ No exceptions were filed to the judge's findings that the Respondent: violated Sec. 8(a)(3) and (1) of the Act by discharging employees Donald Braham, Gary Combs, Nelson Lanham, Scott Stiffler, and Marcus Grinter and by issuing written warnings to and discharging employee Debra Watson; and violated Sec. 8(a)(1) of the Act by removing a union flyer from a bulletin board on which nonwork-related materials were allowed to be posted.

² The General Counsel has excepted to the judge's failure to order the Respondent to remove from its files the unlawful disciplinary warnings issued to Watson, and any references to the warnings. We find merit in this exception and, therefore, we shall modify the order to include this standard remedy. We will also amend the remedy by expressly requiring the Respondent to cease and desist from issuing disciplinary warnings to employees on account of their union activities.

³ Although the judge did not address the evidence regarding this meeting in his decision, the judge generally relied on Stiffler's version of the facts regarding the unfair labor practice allegations. Balint is no longer employed by the Respondent and did not testify. Thus, Stiffler's testimony is un rebutted, and in the absence of a negative credibility resolution by the judge, we have no basis for concluding that the exchange between Stiffler and Balint did not occur.

⁴ *Waste Stream Management, Inc.*, 315 NLRB 1099, 1099–1100 (1994); *Fixtures Mfg. Corp.*, 332 NLRB 565, 565 (2000).

(b) Make Donald Braham, Gary Combs, Nelson Lanham, Scott Stiffler, Marcus Grinter, and Debra Watson whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from any of its files any reference to the unlawful discharges and unlawful warnings, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges and warnings will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its Alliance, Ohio facility copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 2, 2001.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region at-

testing to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 30, 2003

Wilma B. Liebman, Member

Peter C. Schaumber, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT discharge, warn, or otherwise discipline you for supporting the United Steelworkers of America or any other union.

WE WILL NOT threaten you with loss of your job in order to discourage your support of the United Steelworkers of America or any other union.

WE WILL NOT prohibit or remove materials relating to a union organizing drive or other protected activities from bulletin board on which other nonwork-related materials are allowed to be posted.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL, within 14 days from the date of the Board's Order, offer Donald Braham, Gary Combs, Nelson Lanham, Scott Stiffler, Marcus Grinter, and Debra Watson full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Donald Braham, Gary Combs, Nelson Lanham, Scott Stiffler, Marcus Grinter, and Debra Watson whole for any loss of earnings and other benefits resulting from their discharge, less any interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of the employees mentioned above, and the unlawful warnings issued to Debra Watson, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

ALLIANCE STEEL PRODUCTS, INC.

Susan Fernandez, Esq., for the General Counsel.

Mario Gaitanos, Esq., of Canton, Ohio, for the Respondent.

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN Administrative Law Judge. This case was tried in Canton, Ohio, on September 9–12, 2002. The initial charge was filed on August 6, 2001, and the complaint was issued on February 27, 2002. After a third amended charge was filed on May 14, 2002, an amended complaint was issued on June 20, 2002. The General Counsel alleges that Respondent, Alliance Steel Products, Inc., violated Section 8(a)(3) and (1) of the Act by terminating Donald Braham, Gary Combs, and Nelson Lanham on July 31, 2001; by terminating Scott Stiffler and Marcus Grinter on August 1, 2001; and by issuing written warnings and then terminating Debra Watson on September 26, 2001. The General Counsel also alleges that Respondent violated the Act in threatening employees and removing union literature from a bulletin board.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

During 2001, Respondent, a corporation, produced heavy gauge metal stamping products at its facility in Alliance, Ohio, where it annually sold goods in excess of \$50,000 directly to companies in the rubber industry, which were directly engaged in interstate commerce. Alliance also sold goods directly or indirectly to the United States Armed Forces. Respondent admits and I find that it was an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act dur-

ing 2001 and that the Union, the United Steelworkers of America, is a labor organization within the meaning of Section 2(5) of the Act.¹

II. ALLEGED UNFAIR LABOR PRACTICES

Respondent conducted two meetings for its employees on or about July 1, 2001, regarding their productivity in operating metal stamping presses at its facility. One meeting was held for the first-shift employees and die setters and another for second- and third-shift employees. The plant manager, Bob Balint, conducted both meetings and conveyed essentially the same message at both gatherings.²

Balint told the employees that the productivity of employees at the plant had declined over the last several years and that Respondent was instituting a quota and incentive program to restore worker productivity to its former level. Balint stated that employees who failed to meet the quotas would at some point be terminated, but he did not provide a timeframe after which such terminations would occur. Balint indicated that he would counsel employees and make suggestions as to how they might improve prior to terminating any of them for failure to meet the quotas. He made some reference to a 60-day time period, which was somewhat ambiguous. It apparently referred to the period after which bonus checks would be issued to employees who exceeded the quota.

After the meeting, Respondent placed a quota number on a cream-colored card which remained at each press. At the end of each shift, the press operator turned in a white card on which he or she recorded his or her name, the job number of the part and the number of pieces of the part they had produced. During July, First-Shift Foreman Mike Doak spoke to a number of employees who were not meeting their production quotas.

Doak asked Scott Stiffler why he was not meeting the quotas. Stiffler told Doak that the quotas were fictitious and that Respondent had instituted and abandoned an incentive system previously.³ Doak also told Gary Combs that he needed to increase his productivity. Doak told Donald Braham that he could be terminated if he did not increase production, but he gave Braham no indication as to when this might occur.

On Saturday morning, July 21, 2001, four employees; Scott Stiffler, Debra Watson, Howard Hanschin, and Robert Nuzum met Union Organizer Craig Hensley at a McDonalds restaurant in Alliance. The four signed union authorization cards and took blank cards and union literature with them.

On the following Monday, July 23, Stiffler and Braham distributed union literature in a parking lot right outside the office windows of Respondent's president, Lane Witte, and other

¹ Since mid-2002, Respondent's facility has been apparently operated by Pro-Tech, Ltd.

² Balint no longer works for Alliance or at this facility. Neither party called him as a witness.

³ Stiffler may well have used the word fuck or fucking in this conversation but I decline to credit the testimony of Michael Doak and James Tedrow that Doak threatened Stiffler with termination and that Stiffler responded by indicating that he had no intention of meeting the quotas and that he told Doak that Respondent couldn't do anything to him if he didn't. It is very unlikely that an employee threatened with termination would respond in this manner.

management officials. Witte and Balint came to these windows and looked out while the literature distribution was taking place. On that date Stiffler, Braham, and Robert Nuzum began wearing union buttons to work. Witte and Balint, thus, became aware of the union activities and sympathies of all three on or about July 23.⁴

Respondent terminated the employment of Braham, Gary Combs, and Nelson Lanham on July 31. The next day, Alliance terminated Scott Stiffler and Marcus Grinter. Combs never signed a union authorization card nor supported the Union in any other manner. Lanham and Grinter signed authorization cards but the General Counsel has not established that Respondent was aware of union activity on the part of either employee. Michael Doak, the five employees' foreman, did not know who was going to be terminated until he was directed by Balint to bring each of the terminated employees to Balint's office. Indeed, prior to July 31, Doak did not know that the termination of any employee was imminent.

A. The Termination of Scott Stiffler

An appropriate place to begin the analysis of the issues in this case is with the termination of Scott Stiffler. This is so because he was the most notorious union supporter and because the explanation for his discharge offered by Respondent's president, Lane Witte, is so obviously pretextual that it undermines his credibility in all respects.

Witte testified that he decided to terminate five employees and determined that the five with the lowest productivity figures for the month of July 2001 would be the ones who would be discharged. However, he testified he considered other factors that led him to retain employees with lower July production figures than those terminated. The employees with the worst July productivity figures through the 27th day of the month were (in ascending order): Braham (60 percent of quota); Combs (62 percent of quota); Paul Temple (66 percent); Lanham (67 percent); Grinter (73 percent); Ed Dozier (74 percent); and Randy Collins, Howard Hanschin, and Stiffler (77 percent).

Witte did not offer a credible explanation for terminating Stiffler rather than Dozier.⁵ He testified that he didn't terminate Dozier because Dozier was "showing great improvement" and because he lived in a halfway house. While taking into account Dozier's undocumented improvement, Witte excluded Stiffler's July 31 production figures from his calculation even though he didn't sign Stiffler's termination notice until August 1. The July 31 production figures brought Stiffler's productivity for July up to 79.8 percent.

Witte offered an equally incredible explanation for terminating Stiffler rather than Paul Temple. He testified he decided to terminate five employees, but did not terminate Temple because he was a probationary employee. I find it incredible that

Respondent would retain a probationary employee, particularly one who was not showing any particular aptitude or interest in his job, over Stiffler, who had worked for the Company for almost 4 years and who was historically an excellent press operator.

Moreover, Temple failed to show up for work or call in for 3 days prior to August 1; thus, I infer that Witte knew he had abandoned his job by the time he discharged Stiffler. I find he terminated Stiffler anyway to rid the Company of the most active union adherent. According to Foreman Michael Doak, Temple was hardly the kind of employee one would go out of his way to exempt from a layoff even prior to July 31. According to Doak, "Paul Temple was only there for a month or so and he missed a lot of work and he just quit coming to work."

However, Witte's testimony regarding employee Randy Collins most clearly establishes the pretextual nature of Respondent's explanation for Stiffler's termination. Witte insisted that he retained Collins instead of Stiffler because Collins was indispensable. Witte testified that Collins was not only a press operator but also one of two people in the plant who could set a progressive die. Witte's credibility was destroyed by the following testimony of Michael Doak with regard to Collins:

He helped out a couple of times but that was about it. I mean he wasn't . . . known as a die setter. About the only thing he ever did on setting dies was clamped them up. [Tr. 620.]

In order to prove a violation of Section 8(a)(3) and (1), the General Counsel must show that union activity or other protected activity has been a substantial factor in the employer's adverse personnel decision. To establish discriminatory motivation, the General Counsel must show union or protected concerted activity, employer knowledge of that activity, animus or hostility towards that activity, and an adverse personnel action caused by such animus or hostility. Inferences of knowledge, animus, and discriminatory motivation may be drawn from circumstantial evidence as well from direct evidence.⁶ Once the General Counsel has made an initial showing of discrimination, the burden of persuasion shifts to the employer to prove its affirmative defense that it would have taken the same action even if the employee had not engaged in protected activity. *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981).

Scott Stiffler engaged in union activity of which Respondent was aware. I infer animus towards that activity and discriminatory motive from the pretextual explanation for his selection for termination, as well as the timing of his discharge, a week after the beginning of the Union's organizational campaign. On this basis I conclude that the General Counsel established a *prima facie* case of discrimination regarding Stiffler's termination, which was not rebutted by Respondent.

Findings of antiunion animus and discriminatory motive may be predicated on the pretextual reasons advanced for a personnel action. It is well settled that when a respondent's stated motives for its actions are found to be false, the circumstances

⁴ It has not been established that Howard Handschin indicated or disclosed his union sympathies to Respondent or whether Respondent was aware of Handschin's support for the Union.

⁵ At p. 7 of its brief, Respondent asserts that Dozier was prounion. There is no evidence for this assertion. The cited transcript reference (Tr. 477) refers only to employee Howard Handschin as being prounion, rather than to Handschin and Dozier.

⁶ *Flowers Baking Co.*, 240 NLRB 870, 871 (1979); *Washington Nursing Home, Inc.*, 321 NLRB 366, 375 (1966); *W. F. Bolin Co. v. NLRB*, 70 F.3d 863 (6th Cir. 1995).

may warrant an inference that the true motive is an unlawful one that the respondent desires to conceal, *Fluor Daniel, Inc.*, 304 NLRB 970, 971 (1991); *Fast Food Merchandisers*, 291 NLRB 897, 898 (1988), *Shattuck Denn Mining Corp.*, 362 F.2d 466, 470 (9th Cir. 1966).

In a case arising under the Age Discrimination in Employment Act, the Supreme Court reiterated the probative value of an employer's pretextual reasons for a personnel action in proving discrimination.

Proof that the defendant's explanation is unworthy of credence is simply one form of circumstantial evidence that is probative of intentional discrimination, and it may be quite persuasive. . . . In appropriate circumstances, the trier of fact can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose. Such an inference is consistent with the general principle of evidence law that the factfinder is entitled to consider a party's dishonesty about a material fact as "affirmative evidence of guilt." Moreover, once the employer's justification has been eliminated, discrimination may well be the most likely alternative explanation, especially since the employer is in the best position to put forth the actual reason for its decision. [*Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000).]

I therefore conclude that Respondent violated Section 8(a)(3) and (1) in terminating Scott Stiffler's employment on August 1, 2001.

B. The Terminations of Braham, Combs, Lanham, and Grinter

The General Counsel contends that when Respondent learned of the organizational campaign, it accelerated the discharge of employees whose productivity was low. If a nondiscriminatory layoff of five employees were planned for July 31 on the basis of the July production figures alone, Braham, Combs, Lanham, and Grinter would have been among the five employees discharged. However, I conclude that the timing of the layoff of employees at the end of July was motivated by animus towards the union organizational drive. It was made very hastily and almost immediately after Respondent learned of the drive.

The fact that, the timing of the discharges and the number of discharges was a complete surprise to Foreman Doak, indicates that this decision was made in haste and was discriminatorily motivated. Similarly, the fact that Respondent did not counsel employees as promised by Balint on July 1, indicates a change of heart brought on by the organizing drive.

Given the absence of any alternative explanation for the sudden decision to implement the discharges at the end of July, the close proximity to Respondent's discovery of the organizational drive and the great lengths to which Alliance went to discharge Scott Stiffler, I conclude that the General Counsel has established that the timing of the discharges was discriminatorily

motivated.⁷ I, thus, conclude that Respondent violated Section 8(a)(3) and (1) in discharging all five employees.

When an employer discharges a group of employees to discourage employees generally from engaging in union activities, it is the discharge, not the selection of individual employees that is unlawful. Thus, the General Counsel was not required to show a correlation between each employee's union activity and his or her discharge. Instead, the General Counsel's burden is to establish that the discharge was ordered to discourage union activity or in retaliation for the protected activities of some of the employees, *ACTIV Industries*, 277 NLRB 356 fn. 3 (1985).

I find the General Counsel has met his burden of proving unlawful the discharges of July 31 and August 1, 2001. This is so despite the fact that Gary Combs did not engage in protected activity and despite the fact that there is no evidence that Respondent was aware of protected activity on the part of Grinter and Lanham. As the Second Circuit noted almost 40 years ago, "[a] power display in the form of a mass lay-off, where it is demonstrated that a significant motive and a desired effect were to 'discourage membership in any labor organization,' satisfies the requirements of Section 8(a)(3) to the letter even if some white sheep suffer along with the black," *Majestic Molded Products, Inc. v. NLRB*, 330 F.2d 603 (2d Cir. 1964).

C. The 10(b) Issue with Regard to Combs, Lanham, and Grinter

The Union filed a third amended charge on May 14, 2002, which for the first time alleged a violation of the Act with regard to the discharges of Combs, Lanham, and Grinter. Obviously, these allegations were made more than 6 months after their terminations. On June 20, 2002, these allegations were added to an amended complaint.

Whether Section 10(b) bars litigation of these allegations depends on whether they are "closely related" to a timely filed charge, *Redd-I, Inc.*, 290 NLRB 1115, 1118 (1988); *Precision Concrete*, 337 NLRB No. 33 (2001). The Board applies a three-factor test for determining whether there is a sufficient relationship between an otherwise untimely allegation and a timely filed charge. Litigation of such allegations is not barred if (1) the untimely allegation involves the same legal theory as a timely charge; (2) the allegations arise from the same factual situation; and (3) the Respondent would raise similar defenses to the timely and untimely charge. I find that Section 10(b) does not bar litigation of the untimely allegations herein.

An identical legal theory is involved with regard to the timely allegation of Braham's discharge and the untimely allegations; to wit that the discharges for poor productivity were accelerated due to Alliance Steel's recent discovery of union activity on the part of some of its employees. Moreover, the untimely allegations arise from the same factual situation as the Braham discharge. Finally, Respondent raises similar, if not identical, defenses to the untimely allegations as it does to the Braham discharge, i.e., that all four employees were discharged for poor productivity after giving them a month to meet the newly instituted quotas.

⁷ Essentially, Respondent viewed the July productivity figures, if cut off on July 27, as a heaven-sent opportunity to discharge Stiffler.

D. The Warnings Issued to Debra Watson and Her Termination

Debra Watson worked at Alliance Steel's plant for 3 months as a temporary employee and then was hired directly by Alliance in January 2001. Watson worked as a press operator, sometimes on the first shift, sometimes on the second.

Watson was one of the employees who met with Union Organizer Craig Hemsley and signed an authorization card on July 21, 2001. Soon afterwards, she distributed union flyers and authorization cards to fellow employees. On July 26, Respondent posted a list of employees whose productivity for the first 3 weeks of that month, if sustained, would result in the receipt of bonus checks. Watson's name was not on this list. She went to the office of Respondent's president, Lane Witte, and accused him of falsifying her production figures on account of her union activity.

Watson sustained an injury to her left shoulder and neck, and was off of work from August 23 to September 14, 2001. When Watson returned to the plant she was on light duty and was assigned the task on inspecting parts coming off the presses for defects.⁸ Due to continuing problems with her left shoulder, Watson performed this task by grasping the parts in her right hand, moving her arm across her body and dropping the parts in a bin.

On September 19, Respondent issued an employee warning report to Watson alleging that she failed to detect six defective parts on the previous day. It has not been established that Watson in fact committed this offense. More specifically, Respondent has not shown that the six defective parts [#686-02] were parts inspected by Watson on September 18. It was on or about September 19, that Watson began wearing a union pin to work. She also wore a union T-shirt once or twice in September.

On September 20, Respondent posted a list near the time-clock of employees whose productivity during the first 3 weeks of September qualified them for an incentive payment. When Watson saw the list, she complained loudly to other employees regarding the fairness of Respondent's administration of its incentive program and told them that this was a reason employees needed a union at the facility. Other employees at the time-clock also expressed dissatisfaction with the administration of the incentive program. In discussing the program, Watson used profanity, which is not uncommon at the facility.

Mark Gordon, Respondent's quality control coordinator, wrote up an employee warning report alleging that Watson was trying to upset and disrupt other employees. He gave the report to either Bob Balint or Lane Witte. Witte and Balint summoned Watson to a meeting on September 25, during which they also presented her with an employee warning report alleging that she has damaged 14 parts by throwing them into a parts bin on September 24. Employee Robert Riordan inspected a

box of parts that contained 14 damaged parts. However, I find that the evidence does not establish that Watson damaged these parts. It has not been established who had custody of the box or had access to the box before Riordan inspected the parts, or whether the box he inspected contained parts inspected by Watson.

I do not credit Witte's testimony with regard to the circumstances surrounding Watson's termination. While I am greatly influenced by the lack of his credibility regarding the termination of Scott Stiffler, his testimony with regard to Watson is also contradictory and not credible.

On the first day of hearing, Witte testified that he "saw her [Watson] personally, when I was walking through the plant, damaging parts on purpose. . . . This was prior to that [warning]" (Tr. 71). Later in the hearing, his testimony was somewhat different.

Q. Can you please identify Exhibit R-19?⁹

A. Yes, The warning after we re-inspected the parts on or about 9/24, I guess.

Q. Now, did you witness Ms. Watson using excessive force in throwing the parts into the . . . is that crates?

A. Not with this part number, no. I witnessed her—

Q. You did witness her—

A. —but not in this instance.

Q. What instance are you referring to? Is it a different part you're referring to?

A. Yes, the day I saw her doing it it was on a smaller press, this part can't run in there that's the only reason I remember that.

Q. What did you witness her doing?

A. When I witnesses [sic] her doing it she basically was staring me down and it wasn't—she was throwing it with force but not that I thought was going to damage the part but she was staring at me as she was overhanding the parts into the box.

Q. Is that the proper way of placing the parts, while inspecting?

A. No, it's not the proper way. I took more offense to that she was challenging me than—the part was sturdy enough that it could withstand it, that didn't bother me. . . . [Tr. 488–489.]

When Respondent's foreman, Michael Doak, testified about the Watson's conduct on September 24, he had a slightly different story to tell.

A. Ah, this is concerning the same job, the 686-02. I assigned Debra Watson that job to check on them parts again and during the day, Lane [Witte] and Bob Balint . . . walked down there observing the operator running the die. . . .

JUDGE AMCHAN: . . . were you present when they were at the die?

A. Yeah, Lane was standing on the other side of the press.

JUDGE AMCHAN: And where were you?

⁸ In its brief, at p. 8, Respondent suggests that Watson returned to work because her workers compensation claim had been denied. In fact, Watson's claim was initially allowed. It was disallowed pursuant to Alliance's appeal, over a month after it discharged her. The claim was ultimately disallowed on the grounds that Watson had not established that she sustained an injury that was causally related to her employment.

⁹ Exh. R-19 is identical to Exh. GC-6.

A. I was standing right there at my desk about 30 foot from them. They was, they was wanting to change the die to where they didn't have to flip the part over in it to make the operation faster and while they was standing there, Lane Witte observed Debra throwing parts overhand, like pitching them, into the box and that day earlier I also observed her doing this.

And at the end of the day, Lane wanted the box pulled out and the parts checked and I also had the damaged parts from that one too. [Tr. 587-588.]

Respondent also called press operator, James Tedrow, to testify about Debra Watson's "throwing of parts." His testimony is also internally inconsistent and leads me to find that Respondent never observed Watson doing anything likely to damage part 686-02 and that the parts inspected by Robert Riordan, more likely than not, were not parts inspected by Watson.

Tedrow testified that, "she was throwing them in a way, you know, that I wouldn't do it, is what I'm saying. I'm not saying she was abusing them and throwing them in the box—you know, like hard or anything, I didn't—no, I'm not saying that . . . But like I say, the fashion that it was going in, it could, it could damage them, yes." (Tr. 656.)

Watson refused to sign the disciplinary warnings presented to her on September 25 and got into a shouting match with Witte. Witte told Watson to go home. After Watson left the office, she encountered Witte's secretary, Stephanie Fuson, who was taking a smoking break in the hallway adjacent to the office. Fuson and Watson looked each other in the eye and Watson said, "Fuck you," to Fuson. Fuson stayed in the hallway until she finished her smoking break (Tr. 501). When she went back to work, she told Witte about her encounter with Watson.

The next day, September 26, Respondent fired Debra Watson.

Analysis

Applying the *Wright Line* test, I conclude that Respondent violated Section 8(a)(3) and (1) in issuing three written warnings to, and then terminating Debra Watson. Watson engaged in protected activity of which Respondent was aware. I infer animus and discriminatory motive from the pretextual reasons given for her discharge and the great lengths Respondent went to in order to terminate union supporter Scott Stiffler less than 2 months previously.

I conclude that Respondent went to the same great lengths to terminate Debra Watson. It is more likely than not she did not pass defective parts as alleged by Respondent or damage 14 parts on September 24. Moreover, her complaints to other employees about the fairness of Respondent's incentive program constituted protected concerted activity, *Main Street Terrace Care Center*, 327 NLRB 522, 524 (1999), *enfd.* 218 F.3d 531, 540 (6th Cir. 2000). Like the employee in *Main Street Terrace Care Center*, Watson's complaints were not the product solely of a personal dispute and were made in close proximity to other protected activities.

Finally, I conclude that Lane Witte's explanation for Watson's termination is pretextual. I do not credit his testimony that he fired Watson when he learned that Watson had said,

"Fuck you," to Stephanie Fuson as she was leaving his office. Witte was looking for an opportunity to discharge Watson and seized upon this incident to justify his actions. The record indicates that Fuson was not terribly upset by the incident in that she finished her cigarette break before coming back into the office. Fuson knew that Watson was leaving the office after a heated exchange with Witte and is unlikely to have taken Watson's remark personally—particularly since there had been no prior animosity between them. I infer that Fuson realized that Watson was not angry with her and mentioned the remark to Witte in a matter of fact manner.

Respondent Violated the Act in Removing Union Literature from its Bulletin Board as Alleged in Complaint Paragraph 6(b), but not as Alleged in Paragraphs 6(a) and (c)

The General Counsel has established that in late July 2001, Bob Balint removed a union flyer from a bulletin board on which nonwork-related materials were allowed to be posted. Thus, Respondent, by Balint violated Section 8(a)(1) as alleged in complaint paragraph 6(b), *Honeywell, Inc.*, 262 NLRB 1402 (1982). Balint also removed a document (GC Exh. 25) from Respondent's bulletin board that had been placed there by Debra Watson on or about September 19, 2001. Watson had printed this document from her computer. It contained certain financial information about Alliance and did not mention the Union. The record does not establish that Balint knew that Watson had posted the document or that he knew or had reason to suspect that it was related to the union's organizing drive or other protected activities. I therefore dismiss complaint paragraph 6(c).

Paragraph 6(a) alleges that Bob Balint threatened employees with termination in order to discourage union activity on or about July 2, 2001. There is no evidence that Respondent was aware of any union activity amongst its workforce until July 23. Therefore, this complaint item is dismissed.

CONCLUSIONS OF LAW

1. Respondent violated Section 8(a)(3) and (1) by: terminating Donald Braham, Gary Combs, and Nelson Lanham on July 31, 2001; by terminating Scott Stiffler and Marcus Grinter on August 1, 2001; and by issuing written warnings to Debra Watson and terminating her on September 26, 2001.

2. Respondent, by Bob Balint, violated Section 8(a)(1) in late July 2001, by removing a union flyer from a bulletin board on which nonwork-related materials were allowed to be posted.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged employees, it must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as com-

puted in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁰

ORDER

The Respondent, Alliance Steel Products, Inc., Alliance, Ohio, its officers, agents, successors,¹¹ and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against any employee for supporting the United Steelworkers of America or any other union.

(b) Removing or prohibiting the posting of materials relating to union organizing or other protected activities on bulletin boards on which other nonwork-related materials are allowed to be posted.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Donald Braham, Gary Combs, Nelson Lanham, Scott Stiffler, Marcus Grinter, and Debra Watson full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Donald Braham, Gary Combs, Nelson Lanham, Scott Stiffler, Marcus Grinter, and Debra Watson for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment re-

ords, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its Alliance, Ohio facility copies of the attached notice marked "Appendix."¹² Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 31, 2001.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., November 14, 2002

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting the United Steelworkers of America or any other union.

WE WILL NOT prohibit or remove materials relating to a union organizing drive or other protected activities from bulletin boards on which other non work-related materials are allowed to be posted.

¹⁰ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹¹ It is not necessary to determine whether Pro-Tech, Ltd. is a successor to Alliance Steel Products. I leave that determination to the compliance stage of these proceedings. Moreover, it has not been established on this record that Alliance has ceased to operate the facility in question. If Pro-Tech operates the plant, there are a number of indicia of successor status. The plant produces the same type or similar products with the same machinery as did Alliance. Many of the employees and supervisors at the plant were employed by Alliance. Lane Witte, the president of Alliance, testified that he is a vice president of Pro-Tech, owning 25 percent of Pro-Tech's stock. He also testified that the president of Pro-Tech was aware of the pending unfair labor practice charges in this case when Pro-Tech began running the Alliance plant.

¹² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Donald Braham, Gary Combs, Nelson Lanham, Scott Stiffler, Marcus Grinter, and Debra Watson full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Donald Braham, Gary Combs, Nelson Lanham, Scott Stiffler, Marcus Grinter, and Debra Watson

whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of the employees mentioned above, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

ALLIANCE STEEL PRODUCTS, INC.